



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2535

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119168.

The Texas Department of Health (the "department") received a request for the investigation report concerning complaint number 95-4643 which was reported about Columbia Bellaire Hospital. You claim that some of the responsive information is excepted from required public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. You have submitted the requested information to this office for review.

The department, however, has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

The department argues that some of the requested documents are confidential mental health records. Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). We agree that portions of the submitted information may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health and Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

You also claim that some of the requested information is protected under section 552.101 of the Government Code by a right to privacy. Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). After reviewing the documents at issue, we agree that some of the information may be withheld. *See* Open Records Decision No. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have bracketed the information that must be withheld under section 611.002 and common-law privacy.

Because we resolve this request under section 611.002 and common-law privacy, we do not address your argument under the article 4495b of Vernon's Texas Civil Statutes. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 119168

Enclosures: Marked documents

cc: Ms. Rachel E. Huntzman
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(w/o enclosures)